IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPLICATINO NO.187 OF 2002

The Commissioner of Income Tax, Mumbai .. Petitioner
V/s
Neelkamal Exhibitors Pvt.Ltd. .. Respondent

Mr.A.N.Kotangale for the Petitioner.

CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.
DATE : 23rd January, 2007.

P.C.:

1. Heard the learned Counsel for the Petitioner. By this Application, the following substantial question of law is sought to be raised by the Petitioner.

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in cancelling the order of the Commissioner of Income-Tax u/s.263 relying upon decision in the case of P.Muncherji when the said decision is not in operation due to stay of operation granted by the Supreme Court?"

2. There is no dispute that on the day when the Commissioner of Income Tax invoked the jurisdiction under Section 263 of the Income Tax Act, there was already a decision of this Court in the case of **Commissioner of Income Tax V/s.P.Muncherji & Company - 167 ITR 671**. In view of the aforesaid judgment which was in favour of the assessee, the Commissioner of Income Tax could not have invoked the jurisdiction under Sectino 263 of the Income Tax Act since it was covered by the aforesaid judgment.

3. There is no substantial question of law involved in this matter. Hence, the Income Tax Application stands dismissed.

(J.P.DEVADHAR, J.) **(DR.S.RADHAKRISHNAN,J.)**